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EXAMINER

LEROUX, ETIENNE PIERRE

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2171

DATE MAILED: 03/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/819,649

Applicant(s)

NAKAZATO, TOSHIAKI

Examiner

Etienne P LeRoux

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7, 8 and 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat 5,930,791 issued to Leu (hereafter Leu '791).

Regarding claims 1, 8 and 15-17, Leu '791 discloses:

- an analyzing unit [Fig 1, 12] for analyzing requested item of a measured sample
- an analysis related information database [Fig 1, 16] for holding analysis related information necessary for analyzing said sample
- a database manager [Fig 1, 14] for storing inputted said analysis related information into said analysis related information database and outputting information from said analysis related information database
- a data access controller [Fig 1, 14] for controlling storing said analysis related information into said analysis related information database and outputting therefrom in a text-based file format provided with a header defining a data item identifier for each data item and functioning as a key field for data retrieval of each data item [col 4, lines 57-64]
- wherein said analysis related information is stored in the text-based file format thereby enabling inputting and retrieving directly from said database with data format conversion [Fig 3, col 5, lines 38-63].

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- wherein each backed up piece of information is provided with tag information identifying at least one of analyzing device, time stamp, and correction information [col 5, lines 26-34].

Regarding claims 2 and 19, Leu '791 discloses on-line communication [col 3, lines 37-39]

Regarding claim 3, Leu '791 discloses on-line communication [col 3, lines 37-39] and a header defining a data item identifier for each data item [col 4, lines 57-64].

Regarding claims 7 and 18, Leu '791 discloses a display unit [Fig 1, 22]

Regarding claim 15, Leu '791 discloses a second storage device [Fig 1, 18 and 20 and col 4, lines 10-25].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leu '791 per claims 1 and 8 above and further in view of Pub No. US 2001/0042094 authored by Mitchell et al (hereafter Mitchell '094).

Regarding claims 4 and 13, Leu '791 discloses the essential elements of the claimed invention per supra paragraph except for an XML file format. Mitchell '094 discloses an XML file format [paragraph 34]. It would have been obvious to one of ordinary skill in the art at the

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time the invention was made to modify Leu '791 to include an XML file format as taught by Mitchell '094 for the purpose of providing a convenient format for deployment of data over a network [paragraph 34].

Claims 5, 14, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leu '791 as applied to claims 1, 8 and 15, and further in view of US Pat. No. 6,345,278 issued Hitchcock et al (hereafter Hitchcock '278).

Regarding claims 5, 14, 20 and 21, Leu '791 disclose the essential elements of the claimed invention per supra paragraph but does not disclose a CSV format. Hitchcock '278 discloses CSV format [col 21, lines 1-5]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Leu '791 to include a CSV format as taught Hitchcock '278 for the purpose of tailoring the individual elements to the specifications of a particular institution [col 20, lines 65-67].

2. Claims 6 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leu '791 as applied to claims 1 and 8 above and further in view of US Pat No 5,434,971 issued to Lysakowski (hereafter Lysakowski '971).

Regarding claims 6 and 9, Leu '791 discloses the essential elements of the claimed invention per supra paragraph but does not disclose an editor for editing data. Lysakowski '971 discloses an editor for editing data [col 4, line 66 through col 5, line 2]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Leu '791

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to include an editor as taught by Lysakowski '971 for the purpose of editing the configuration structure [col 4, line 67].

Regarding claim 11, Leu '791 discloses on-line communication [col 3, lines 37-39]

Regarding claim 12, Leu '791 discloses on-line communication [col 3, lines 37-39] and discloses a header [col 4, lines 57-64]

Regarding claim 10, Leu '791 discloses a display [Fig 1, 22].

Response to Arguments

Applicant's arguments filed 12/9/2003, have been fully considered but they are not persuasive.

First Applicant Argument:

Applicant states on page 9, "The claimed text-based file format, of which non-limiting examples include CSV or XML, is useful as a data format for a tremendous volume of analyzing relating information, and is provided with a header defining a data item identifier for each data item. The text-based file format also functions as a key field for data retrieval of each data item. therefore, it is possible to input and retrieve the analysis related information directly from the database without format conversion.

Applicant states on page 9, "Leu describes databases configured on a single memory storage device, namely a hard drive. Leu however, does not disclose or suggest storing information in a text-based file format."

First Examiner Response:

Examiner is not persuaded for the reasons given below.

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MPEP § 2111.01 requires that “[d]uring examination, the claims must be interpreted as broadly as their terms reasonably allow. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed Cir. 1989). One must bear in mind that, especially in nonchemical cases, the words in a claim are generally not limited in their meaning by what is shown or disclosed in the specification. It is only when the specification provides definitions for terms appearing in the claims that the specification can be used in interpreting claim language. *In re Vogel*, 422 F.2d 438, 441, 164 USPQ 619, 622 (CCPA 1970).”

Examiner is justified in interpreting the claim language as broadly as their terms reasonably allow because Applicant states that CSV or XML are non-limiting examples of a text-based file format. Therefore, the following disclosure by Leu in column 4, lines 57-65 reads on a text-based file format.

The term "symmetrical-type" includes those data bases which are symmetrical, those data bases which have a substantial degree of structural symmetry, this includes similar data fields, organization and structure. A predetermined data format which enables access to the test results 26 by a computer having a single set of programmed access instructions would have an acceptable degree of symmetry to be a symmetrical-type database. **An example of a predetermined format includes one in which stores data so that the test results are tabulated by result date, test type performed, patient name and sample number. Accordingly, in an embodiment of the present invention, the symmetrical-type data bases have data organized by result date, test type performed, patient name and sample number.** Such organization enables the display of each symmetrical-type database by the computer 14.

Second Applicant Argument:

Applicant states on page 9, “It is respectfully submitted that Saxton fails to remedy this defect of Leu. [.....] Saxton does not disclose or suggest storing information in a text-based file format in a database. Moreover, because the header of Saxton contains general information regarding the document file and offset information that defines the text range, format information range, the header of Saxton could not function as a data retrieval key for retrieving measuring

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item information, reagent information, reference sample information or configuration information of a sample analyzing system.”

Second Examiner Response:

Examiner is not persuaded. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the header of Saxton could not function as a data retrieval key for retrieving measuring item information, reagent information, reference sample information or configuration information of a sample analyzing system) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Third Applicant Argument:

Applicant states on page 10, “Claim 15 has been amended to recite that each backed up piece of information is provided with tag information identifying at least one of analyzing device, time stamp, and correction information. By displaying this tag information on the backup operation screen, the operator is able to select desired backup information to carry out the recovery operation in an efficient manner. Also b displaying this tag information on the backup operation screen, backup operations may be carried out through both a local console and a remote computer.

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Neither Leu nor Saxton, either alone or in combination, discloses or suggests the use of any type of tag information. Accordingly, it is submitted that Claim 15 patentable distinguishes over the applied combination of Leu and Saxton. Likewise, it is respectfully submitted that Claims 16-19 patentable distinguish over Leu and Saxton for the reasons above-noted with regard to Claim 15."

Third Examiner Response:

Examiner is not persuaded. Leu discloses time-stamp information in column 5, lines 26-37 as follows:

In an alternate embodiment, the computer is programmed to periodically transfer data from the working database 16 into the archive database 18. This periodic transfer of data frees the working database from cumulative data which may distract the user. An operator may access the working database to **find only the test results from the same day**. This enables an operator to disregard cumulative data which is archived.

The length of time for periodically transferring of data is programmable. In one embodiment, the time from **one hour to seven days, and preferably, between two and four days**.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etienne LeRoux whose telephone number is (703) 305-0620.

The examiner can normally be reached on Monday – Friday from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic, can be reached on (703) 308-1436.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Etienne LeRoux

3/8/2004



SAFET METJAHIC
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